

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, ) CASE NO. 8:02CR353  
                                  )  
Plaintiff,                    )  
                                  )  
vs.                            )  
                                  )  
ERROLL FLYNN SHEPARD,      )  
                                  )  
Defendant.                    )

MEMORANDUM  
AND ORDER

This matter is before the Court on the Defendant's motion to reduce his sentence as a result of Amendment 706 to the crack cocaine guidelines (Filing No. 636). The probation office has submitted a worksheet. Defense counsel entered an appearance (Filing No. 642.) The Court has considered the government's response (Filing No. 666).

The Defendant was sentenced to 360 months imprisonment on Count I of the Indictment charging him with conspiracy to distribute or possess with intent to distribute 50 grams or more of a mixture or substance containing cocaine base. His total offense level was 41, his criminal history category was VI, and his guideline range was 360 months to life. The Defendant is a career offender. (Filing No. 454.)

On remand, the Defendant was resentenced as a career offender. His total offense level was 37 under U.S.S.G. § 4B1.1, his criminal history category was VI, and his sentencing range remained at 360 months to life. The Court departed below the guideline range in sentencing the Defendant to 300 months imprisonment. (Filing No. 596.)

The Eighth Circuit has stated that a career offender's base offense level is determined under U.S.S.G. § 4B1.1 and not U.S.S.G. § 2D1.1. The sentencing commission lowered the levels under § 2D1.1(c) and did not amend § 4B1.1. *United States v. Thomas*, 524 F.3d 889, 890 (8<sup>th</sup> Cir. 2008). Therefore, the crack cocaine

amendments have no effect on this Defendant's case, and his sentence cannot be lowered under the crack cocaine amendments to the guidelines.

IT IS ORDERED that the Defendant's motion to reduce his sentence as a result of Amendment 706 to the crack cocaine guidelines (Filing No. 636) is denied.

DATED this 21<sup>st</sup> day of July, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge